

TITLE 16
BUREAU OF AUTOMOTIVE REPAIR

**NOTICE OF PROPOSED REGULATORY ACTION AND PUBLIC HEARING
CONCERNING**

Referee Services and Repair Cost Waiver

SPECIFICALLY

Referee Services and Fees and Adjustment to the Smog Check Repair Cost Waiver Limit

NOTICE IS HEREBY GIVEN that the Department of Consumer Affairs/Bureau of Automotive Repair (hereinafter “Bureau” or “BAR”) is proposing to take the actions described in the Informative Digest. Any person interested may present statements or arguments orally or in writing relevant to the action proposed at hearings to be held at the following locations on the following dates:

NORTHERN CALIFORNIA

Tuesday, February 26, 2013 at 11:00am
Bureau of Automotive Repair, Room 100B
10949 North Mather Blvd.
Rancho Cordova, CA 95670

Written comments, including those sent by mail, facsimile, or e-mail to the addresses listed under Contact Person in this Notice, must be **received by the Bureau at its office no later than 5:00pm on Tuesday, February 26, 2013**, or must be received by the Bureau at the above referenced hearing. **Comments sent to persons or addresses other than those specified under Contact Person, or received after the date and time specified above, regardless of the manner of transmission, will be included in the record of this proposed regulatory action, but will not be summarized or responded to.** The Bureau, upon its own motion or at the request of any interested party, may thereafter formally adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit oral or written testimony related to this proposal or who have requested notification of any changes to the proposal.

AUTHORITY AND REFERENCE:

Pursuant to the authority vested by Section 9882 of the Business and Professions Code, and to implement, interpret or make specific Sections 44001.5, 44002, 44014, 44017, 44017.4, and

44036 of the Health and Safety Code, the Bureau is proposing to adopt the following changes to Article 5.5 of Chapter 1, Division 33, Title 16, California Code of Regulations.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

INTRODUCTION:

BAR, within the Department of Consumer Affairs, is the state agency charged with implementation and administration of the Smog Check Program (Program). The Program is designed to reduce air pollution from mobile sources, such as passenger vehicles and light-duty trucks, by requiring these vehicles to meet specific emissions standards established by BAR.

BACKGROUND:

Smog Check stations and inspectors rely on the *Smog Check Manual*, which is incorporated by reference in regulation, to perform proper inspections and repairs. The manual covers the vast majority of inspection procedures; however, there are certain vehicles with unusual designs or modifications that require unique inspection procedures that are not covered in the manual. BAR contracts with a separate entity known as the Smog Check Referee (Referee) for these and other consumer services that are not performed at a licensed Smog Check station. The Referee is part of the consumer protection-oriented quality assurance portion of the program required by H&S sections 44014 and 44036.

Special inspection services have been performed by the Referee since the Program's inception in 1984. However, AB 2289 authorized BAR to charge consumers a fee to offset the costs for providing these services. This regulatory action allows BAR, through the Referee, to charge consumers utilizing and benefitting from the special services. Currently, the cost associated with providing Referee services is borne by the Program through the collection of the \$8.25 certificate of compliance fee, among others.

Under this proposal, fees charged by the Referee for special inspection services that involve similar time and function as the services performed by licensed Smog Check stations will be equal to the average Smog Check inspection cost charged by licensed stations. Consumers that own a vehicle with unique or unusual designs will be required to pay a fee that is 185% of the average statewide cost for a Smog Check inspection. This divergence in cost calculation is necessary because vehicles with unique or unusual designs require more time and resources to inspect and staff with specific knowledge to determine the emissions control requirements for each vehicle being inspected. These vehicles include direct import vehicles, specially constructed vehicles, vehicles with engine changes, and vehicles equipped with alternative retrofit fuel systems. In most cases, the Referee inspects the vehicle to establish the emissions control requirements and then affixes a tamper resistant label to the vehicle. Once this label is

affixed, the consumer may take the vehicle to a licensed Smog Check station for future inspections.

Correlating the Referee inspection fee(s) to the average Smog Check inspection cost ensures that consumers understand how the fee was established and that it reflects what they would pay if these services were offered and performed by Smog Check stations.

The Referee is currently operated by the Foundation for California Community Colleges (FCCC) under a contract with BAR. The current Referee network consists of 31 facilities located at community college campuses.

Repair Cost Waiver:

H&S section 44017 establishes a process that allows eligible consumers that have failed a Smog Check inspection and have spent a minimum of \$450 on emissions-related repairs to qualify for a repair cost waiver. The repair cost waiver allows a consumer to bypass one biennial Smog Check certification requirement in order to complete the registration renewal process for a specific vehicle. This law also requires the BAR to periodically adjust the repair cost limit in accordance with the Consumer Price Index (CPI), as published by the Bureau of Labor Statistics (BLS). Accordingly, this regulatory action proposes to adjust the repair cost limit from \$450 to \$650 based on changes to the CPI. Under this proposal, the repair cost limit adjustment would take effect on July 1, 2013.

Moreover, this proposal establishes a process to adjust the repair cost limit on a regular basis based on procedures established in this regulatory action. Specifically, this regulation allows BAR to adjust the repair cost limit every two years, but only if the CPI results in a change of at least \$25 from the previous cost limit. The proposed adjustment criteria will ensure that the repair cost limit keeps pace with fluctuations in the CPI, avoiding incrementally small or large adjustments.

A repair cost limit that more closely represents the value of current repair costs will result in more vehicles receiving complete repairs and, therefore, a greater reduction of harmful smog-forming emissions. In calendar year 2010, the Referee issued 2,897 waivers at the \$450 repair cost limit. Applying the adjusted \$650 repair cost limit to this data could have led to approximately 2,100 more vehicles receiving repairs in order to pass a Smog Check inspection.

H&S section 44017(c) requires BAR to periodically revise the repair cost limit in accordance with the CPI. The proposed waiver adjustment was determined using the BLS All Urban Consumers Index (CPI-U). The CPI-U accounts for all the consumer goods and services purchased by urban households, representing about 87 percent of the total U.S. population, according to the BLS.

CURRENT REGULATION:

Existing regulation in the California Code of Regulations, Title 16, Division 33, Chapter 1, Article 5.5, is summarized as follows:

1. Section 3340.1 specifies definitions used in the Smog Check Program.
2. Section 3340.43 specifies qualifying criteria for the Repair Cost Waiver Limit.

EFFECT OF REGULATORY ACTION:

The Bureau of Automotive Repair (BAR) is proposing the following amendments to existing regulations:

- I. **Referee Services Fee:** Pursuant to Assembly Bill 2289 (Eng, Chapter 258, Statutes of 2010), specifically Health and Safety Code (H&S) section 44014, this action allows BAR to charge a fee to offset the costs of providing Referee services.
- II. **Adjustment to the Smog Check Repair Cost Limit:** In accordance with H&S section 44017, this action seeks to adjust the repair cost limit to reflect changes in the CPI, as published by the United States Bureau of Labor Statistics (BLS).

SPECIFIC PURPOSE OF THE REGULATORY PROPOSAL:

The Bureau of Automotive Repair (BAR) is proposing the following amendments to existing regulations:

1. **Amend Section 3340.1 of Article 5.5, Chapter 1, Division 33, Title 16 California Code of Regulations, as follows:**

- a. Add definition for “alternative fuel retrofit system.”

Defining an alternative fuel retrofit system is necessary because these vehicles must be inspected at the Referee. This definition provides the public with clear and concise regulations.

- b. Add definition for “average inspection cost.”

Defining the average inspection costs is necessary as it will be used as the basis for determining the cost that a consumer would pay for a particular Referee service.

- c. Add definition for “engine change.”

Defining an engine change is necessary because these vehicles must be inspected at the Referee. This definition provides the public with clear and concise regulations.

- d. Add definition for “Smog Check Referee or Referee.”

Defining the Smog Check Referee is necessary because BAR is requiring certain vehicles to receive an inspection at the Referee. This definition provides the public with clear and concise regulations.

2. Add Section 3340.4 of Article 5.5, Chapter 1 of Division 33 of Title 16 of the California Code of Regulations as follows:

- a. Add the title of the section to be “Smog Check Referee Services and Fees.”

- b. Add new subsection (a) to regulation.

This subsection lists the services provided by the Referee, including the following: the issuance of repair cost waivers; independent evaluation of consumers Smog Check inspection results; inspection of vehicular exhaust systems; verification of proper installation of engine changes; the inspection of direct import vehicles, vehicles with alternative fuel retrofit systems, specially constructed vehicles, and vehicles with unusual design; the issuance of a limited parts exemption; and the inspection of government fleet vehicles and vehicles that the bureau or law enforcement agency has requested a Referee inspection. This addition is necessary to ensure that the public clearly understands what services the Referee provides.

- c. Add new subsection (b) to regulation.

This subsection directs the Referee to affix a tamper resistant label to inspected vehicles, as applicable. Additionally, the label describes vehicle information that is used by Smog Check inspectors during subsequent inspections. This addition is necessary to clarify the Referee’s functions and the purpose of the tamper resistant label.

- d. Add new subsection (c) to regulation.

This subsection allows the Referee to charge a fee for providing special inspection services, directs the Referee to post a list of fees, and explains how fees are calculated. This addition is necessary to provide clear instruction to the Referee and to inform the public on the fees associated with special inspection services for their vehicles.

3. Amend Section 3340.43 of Article 5.5 of Chapter 1 of Division 33 of Title 15 of the California Code of Regulations as follows:

- a. Add a new subsection (a) to section 3340.43 to read, “Beginning January 1, 2013, and in accordance with 44017 (c), a vehicle owner shall qualify for a repair cost waiver only after expenditure of \$650 or more in smog check related repairs. The bureau shall revise the maximum repair cost limit based on adjustments to the CPI, as published by the Bureau of Labor Statistics. The expenditure amount shall be increased biennially, only if the CPI results in an adjustment of at least \$25 since the last CPI adjustment. The revised repair cost limit shall be rounded to the nearest \$5.”

This subsection provides consumers information necessary to determine when they may be eligible for a repair cost waiver and how and when the limit will be adjusted and calculated.

- b. Add a new subsection (b) to section 3340.43 to read, “Repairs covered by a vehicle manufacturer emissions warranty shall not apply toward the repair cost limit. Additionally, a vehicle owner shall not qualify for a repair cost waiver if the vehicle is in need of repairs that are covered by a manufacturer’s emissions warranty.”

This addition is necessary to provide the public with notice that the repair cost limit is being revised and when the change will become effective. Additionally, it informs the public that repair work covered by a manufacturer’s emissions warranty does not qualify for a repair cost waiver.

These changes create new subsections (a), (b), and (c). Additionally, subsection (a) will now be paragraph (c)(1), subsection (b) will now be paragraph (c)(2), subsection (c) will now be paragraph (c)(3), and subsection (d) will now be paragraph (c)(4).

CONSISTENCY AND COMPATIBILITY WITH EXISTING STATE REGULATIONS

BAR has evaluated this regulatory proposal and it is not inconsistent, nor incompatible with existing state regulations.

As described in H&S section 44002, BAR is the state agency solely responsible for the development and implementation of the motor vehicle inspection program. The revisions being made during this regulatory package are consistent with USEPA regulations, specifically, Title 40, Part 51, the California Health and Safety Code, BAR regulations, and Air Resources Board (ARB) regulations.

FISCAL IMPACT ON PUBLIC AGENCIES INCLUDING COSTS OR SAVINGS TO STATE AGENCIES AND COSTS/SAVINGS IN FEDERAL FUNDING TO THE STATE:

The Referee is currently operated by the Foundation for California Community Colleges (FCCC) under contract with BAR. The current Referee network consists of 31 facilities with most located on community college campuses. The collection of fees for Referee services will allow BAR to recover approximately \$568,539 $[(2,835 \text{ inspections} \times \$89) + (6,588 \text{ inspections} \times \$48)] = \$568,539$ annually based on fiscal year 2010-11 inspection data.

This proposal will result in no costs or savings in federal funding to the state.

NONDISCRETIONARY COSTS/SAVINGS TO LOCAL AGENCIES:

None.

LOCAL MANDATE:

None.

COSTS TO ANY LOCAL AGENCY OR SCHOOL DISTRICT FOR WHICH GOVERNMENT CODE SECTIONS 17500-17630 REQUIRES REIMBURSEMENT:

None.

BUSINESS IMPACT:

This regulation will not have a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. This initial determination is based on the following facts, evidence, documents, or testimony:

Referee Service Fee:

This regulatory action does not create any new requirements or costs for businesses. Referee sites are currently operated by the FCCC, which is under contract with BAR. The Referee already provides special inspection services not otherwise available at licensed Smog Check stations. Under this proposal, BAR will allow the Referee to collect a fee from consumers that use their special inspection services. This fee will be used to reimburse BAR for services provided at the Referee.

Consumer Price Index Adjustment for the Repair Cost Waiver:

This regulatory action adjusts the repair cost limit in accordance with changes to the CPI to better reflect the current costs for repairs. As a result, the Smog Check repair industry may see an increase in the number of repairs for vehicles failing a Smog Check inspection, which has the potential to increase revenue by approximately \$427,800 (2,139 vehicles receiving additional repairs X \$200 = \$427,800) annually. This estimate is based on the difference in waivers issued in calendar year 2010 using the \$450 repair cost limit, versus the number of waivers that may have been issued if the proposed \$650 repair cost limit was in place. In calendar year 2010, the program granted 2,897 waivers at the \$450 repair cost limit. Applying the adjusted \$650 repair cost limit to this data could have led to 2,139 more vehicles receiving repairs at Smog Check stations.

BAR has considered proposed alternatives that would lessen any adverse economic impact on business and invites you to submit proposals. Submissions may include the following considerations:

1. The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to businesses.
2. Consolidation or simplification of compliance and reporting requirements for businesses.
3. The use of performance standards rather than prescriptive standards.
4. Exemption or partial exemption from the regulatory requirements for businesses.

BAR does not anticipate any new reporting, recordkeeping or other compliance requirements as a result from the proposed action.

COST IMPACT ON REPRESENTATIVE PRIVATE PERSON OR BUSINESS:

The costs that a representative private person or business would necessarily incur in reasonable compliance with the proposed action and that are known to BAR are:

1. Raising the Repair Cost Limit may cost consumers between \$427,800 annually. Further, these changes will contribute to lower levels of smog-forming pollutants, thus improving

overall health and welfare of all California consumers. Benefits associated with improved health and welfare is indeterminable.

2. Charging for special inspection services performed at the Referee will result in consumer costs of approximately \$568,539 $[(6,588 \text{ inspections} \times \$48) + (2,835 \text{ inspections} \times \$89) = \$568,539]$ annually. This change will contribute to lower levels of smog-forming pollutants, thus improving overall health and welfare of all California consumers. Benefits associated with improved health and welfare is indeterminable.

EFFECT ON HOUSING COSTS:

None.

EFFECT ON SMALL BUSINESS:

BAR has determined that the proposed regulations would affect small businesses.

RESULTS OF ECONOMIC IMPACT ASSESSMENT/ANALYSIS:

BAR has made an initial determination that the proposed regulatory action will not have any impact on the creation of jobs or new businesses, the elimination of jobs or existing businesses, the expansion of businesses, or worker safety in the State of California.

BAR has made an initial determination that the proposed regulatory action will have the following benefits to the health and welfare of California residents and state's environment:

Raising the repair cost limit will reduce the number of waivers issued to consumers. This will result in more vehicles receiving emissions-related repairs for the purpose of passing a Smog Check inspection. Thus, these changes will contribute to a reduction in smog-forming emissions.

Recent studies such as the 2010 RAND Health Foundation report, *The Impact of Air Quality on Hospital Spending*, concluded that, "Meeting federal clean air standards would have prevented an estimated 29,808 hospital admissions and ER visits throughout California over 2005 - 2007... Failing to meet federal clean air standards cost health care purchasers/payers \$193,100,184 for hospital care alone. In other words, improved air quality would have reduced total spending on hospital care by \$193,100,184 in total."

Additionally, an ARB study, *Health Effects of Particulate Matter and Ozone Air Pollution*, November 2007,¹ identified significant health effects attributable to high levels of ozone. Polluting vehicles produce hydrocarbons and oxides of nitrogen which combine in the presence of sunlight to form bad ozone. The report stated that, "Ozone is a powerful oxidant that can damage the respiratory tract, causing inflammation and irritation, and induces symptoms such as coughing, chest tightness, shortness of breath, worsening of asthma symptoms, and even death. Ozone in sufficient doses increases the permeability of lung cells, rendering them more susceptible to toxins and microorganisms. The greatest risk is to those who are more active

¹ http://www.arb.ca.gov/research/health/fs/pm_ozone-fs.pdf

outdoors during smoggy periods, such as children, athletes, and outdoor workers. Exposure to levels of ozone above the current ambient air quality standard leads to lung inflammation and lung tissue damage, and a reduction in the amount of air inhaled into the lungs. Recent evidence has, for the first time, linked the onset of asthma to exposure to elevated ozone levels in exercising children (McConnell, 2002). These levels of ozone also reduce crop and timber yields, damage native plants, and damage materials such as rubber, paints, fabric, and plastics.”

Further, a recent study by USEPA, *Estimating the National Public Health Burden Associated with Exposure to Ambient PM_{2.5} and Ozone*, found that, “Ground-level ozone (O₃) and fine particulate matter (PM_{2.5}) are associated with increased risk of mortality... Using PM_{2.5} and O₃ mortality risk coefficients drawn from the long-term American Cancer Society (ACS) cohort study and National Mortality and Morbidity Air Pollution Study (NMMAPS), respectively, we estimate 130,000 PM_{2.5}-related deaths and 4,700 ozone-related deaths to result from 2005 air quality levels. Among populations aged 65–99, we estimate nearly 1.1 million life years lost from PM_{2.5} exposure and approximately 36,000 life years lost from ozone exposure. Among the 10 most populous counties, the percentage of deaths attributable to PM_{2.5} and ozone ranges from 3.5% in San Jose to 10% in Los Angeles. These results show that despite significant improvements in air quality in recent decades, recent levels of PM_{2.5} and ozone still pose a nontrivial risk to public health.”

These recent studies suggest that, although California air quality has improved, additional reductions to smog-forming pollutants are necessary. Revising the repair cost limit will help ensure that an additional 2,100 vehicles will receive emissions-related repairs in order to pass a Smog Check inspection.

CONSIDERATION OF ALTERNATIVES

BAR must determine that no reasonable alternative, which it considered or that has otherwise been identified and brought to its attention, would either be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposal described in this Notice or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

Any interested person may present statements or arguments orally or in writing relevant to the above determinations at the above-mentioned hearing.

INITIAL STATEMENT OF REASONS AND INFORMATION

BAR has prepared an Initial Statement of Reasons for the proposed action and has available all the information upon which the proposal is based.

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations and of the Initial Statement of Reasons, and all of the information upon which the proposal is based, may be obtained at the hearing or

prior to the hearing upon request from the Bureau of Automotive Repair at 10949 N. Mather Boulevard, Rancho Cordova, California, 95670.

**AVAILABILITY AND LOCATION OF THE RULEMAKING FILE
AND THE FINAL STATEMENT OF REASONS**

All the information upon which the proposed regulations are based is contained in the rulemaking file. Further, the expressed terms, Initial Statement of Reasons, and information upon which the proposed regulations are based is available for public inspection by contacting the persons named below.

You may obtain a copy of the final statement of reasons once it has been prepared, by making a written request to the contact person named below or by accessing the Web site listed below.

CONTACT PERSON

**Inquiries or comments concerning the
proposed administrative action may
be addressed to:**

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The backup contact person is:

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WEB SITE ACCESS

Materials regarding this proposal can also be found on BAR's Web site at www.smogcheck.ca.gov.